No. 80357-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

RAJVIR PANAG, on behalf of herself and all others similarly situated,
Respondent,

v.

FARMERS INSURANCE COMPANY OF WASHINGTON, a foreign insurance company, and CREDIT CONTROL SERVICES, INC., dba Credit Collection Services,
Petitioners.

FARMERS' REPLY TO PANAG'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Ms. Panag's Answer brings up a new issue not raised in Farmers' Petition for Review – whether "driving in Washington without automobile insurance strip[s] a person of the protection of the law"[1] – that warrants a reply under RAP 13.4(d).

II. DISCUSSION

The answer to Ms. Panag's question is, of course, no. The lack of insurance has no effect whatsoever on the determination of the relative fault of parties involved in car accidents under RCW 4.22.070. Neither does the lack of insurance matter if an uninsured driver claims, for example, that the car was defectively designed or repaired. But this does not mean that a driver who, like Ms. Panag, violates the Mandatory Liability Insurance statute and resists the efforts by a law-abiding driver's insurer to collect the subrogated amounts is protected by the ***Consumer Protection Act.***

"The CPA is designed to protect ***consumers*** from unfair and deceptive acts or practices in commerce." *Scott v. Cingular Wireless*, __ Wn.2d __, 161 P.3d 1000, 1005 (2007) (emphasis added). In addition to consumers, the CPA protects parties to private contracts that pose a risk of repeated identical injury. *Hangman Ridge Training Stables v. Safeco*

[1] *See* Panag's Answer to Farmers' Petition for Review, at 1.

Title, Inc., 105 Wn.2d 778, 790-791, 719 P.2d 531 (1986). Both the consumer and private-contract scenarios can have broader implications (the "public interest" element) that warrant "private actions by private citizens [that have become] an integral part of CPA enforcement." *Scott,* 161 P.3d at 1006. *See also id.* ("***[c]onsumers*** bringing actions under the CPA do not merely vindicate their own rights; they represent the public interest . . .") (emphasis added). *See also Dix v. ICT Group, Inc.*, __ Wn.2d __, 161 P.3d 1016, 1022 (2007) ("t]he individual ***consumer*** action to enforce RCW 19.86.020 and vindicate the public interest is thus a significant aspect of a dual enforcement scheme under the CPA . . .") (emphasis added).

Ms. Panag belongs to neither category of private citizens empowered to bring a CPA action. She did not purchase any goods or services from the defendants either in a consumer or a private transaction. Her relationship with the defendants stemmed not from "trade" or "commerce" but from a car accident and therefore was entirely adversarial. The private right of action under the CPA does not attach to adversarial relationships. If it did, any tort claim (such as car accidents, construction and land-use disputes, or defamation claims) could masquerade as a CPA claim in derogation of Washington State's policy disallowing punitive damages.

This is not the law. A newspaper that prints an unflattering report about a citizen group may be liable for defamation but not under the CPA, despite the group's belief that the article is "unfair" and despite the fact that the newspaper is engaged in "trade or commerce." Nor does the CPA apply when the cable company demands payment from people who illegally hook up their television sets to cable programming. Similarly, a property owner who sends letters to a group of trespassers demanding payment for damage caused by the trespass is not liable under the CPA. The parties in these examples lack the fundamental consumer or private contract relationship that triggers the application of the CPA. Likewise, the CPA does not apply to Ms. Panag, not because she was uninsured but because having caused damage to Mr. Hamilton's car (for which Farmers paid) she stands in an adversarial relationship to him and his subrogee.

Nonetheless, Ms. Panag's violation of the Mandatory Liability Insurance statute is relevant for the analysis of her CPA claim because of the Act's focus on public interest:

> It is . . . the intent of the legislature that this act shall not be construed to prohibit acts or practices which are not injurious to the public interest . . .

RCW 18.86.920. *See, e.g., Hangman Ridge*, 105 Wn. 2d at 794 (in the private transaction between an escrow closer and client the public interest element was missing; although "Safeco . . . was undeniably acting within

the scope of its business . . . there are no facts in the record to indicate widespread advertising of loan closings").

The central policy at issue in this case is unambiguous:

> The legislature recognizes the threat that uninsured drivers are to the people of the state. In order to alleviate the threat posed by uninsured drivers it is the intent of the legislature to require that all persons driving vehicles registered in this state satisfy the financial responsibility requirements of this chapter.

RCW 46.30.010. *See also Camacho v. Automobile Club of Southern California*, 142 Cal. App.4th 1394, 1405, 48 Cal. Rptr.3d 770, 779 (Cal. Ct. App. 2006) ("The public is well served when an uninsured driver who is at fault responds to his or her obligations.").

The Court of Appeals' decision makes a mockery of the CPA by endorsing a lawsuit by plaintiffs who ***violated*** this policy and sought to avoid their obligations to the law-abiding drivers. The court in *Camacho* noted the fallacy of this approach: "Even if there is some theory under which Camacho can claim that he was 'injured,' the fact is that he could have avoided any and all action taken by defendants by obtaining and carrying insurance, as the law requires." *Id.* The same applies to *Panag*. To protect herself, Ms. Panag had to do only what the law requires. *See Hangman Ridge*, 105 Wn. 2d at 794 (when "plaintiffs . . . are not

representative of bargainers subject to exploitation and unable to protect themselves," the public interest is not met).

In addition to disregarding the legislative policy that mandates liability insurance, the Court of Appeals created an unprecedented – and incorrect – legal standard for collection efforts against drivers who disregard this mandate. It is neither "unfair" nor "deceptive" for the insured driver, its subrogee, or collection agency to refer to the uninsured driver's obligation as "debt" that is "due" or "owing" or demand payment in similar terms, without obtaining a court judgment. The Court of Appeals improperly disregarded state and federal statutes on "similar matters" that unequivocally so provide:

- "The term 'debt' means any obligation or ***alleged obligation*** of a consumer to pay money arising out of a transaction . . . ***whether or not such obligation has been reduced to judgment.***" 15 U.S.C. § 1692a(5) (emphasis added);
- "'Debtor' means any person owing or ***alleged to owe*** a debt." RCW 19.16.100(ii) (emphasis added);
- Prohibited practices do not include collector's communications with debtors about claims that have not been reduced to judgment. RCW 19.16.250;

- The state that pays injured workers under industrial insurance becomes subrogated to the workers' claims against third parties potentially liable for the injury (including uninsured drivers), and may demand "payments ***due*** to the state fund," without obtaining a judgment, if there is "***reason to believe*** that there is in possession of such third person . . . property which is due, owing, or belonging to [the] worker . . ." RCW 51.24.030; 51.24.060(7) (emphasis added).

Ms. Panag's car accident is documented in a police report. The percentage of her fault was determined by a licensed adjustor. At no point in this case did she identify any specific basis for challenging that percentage. Her argument is simply that subrogees of the insured drivers may not demand payment from the uninsured drivers for injury or property damage they caused without first obtaining a court judgment. (Mr. Stephens who disputed neither the fact of the accident nor the percentage of his fault makes the same argument.) This is categorically wrong. There is no logical reason why uninsured drivers who fail to pay for damage they cause should be treated any differently than consumers who fail to pay their bills. An alleged tort obligation is no less a "debt" that is "due" than an unpaid phone bill. *See Camacho*, 142 Cal. App.4th at

1406 ("Since Camacho was liable for the damages arising from the accident, it does not violate his rights to attempt to collect those damages.").

III. CONCLUSION

The Court of Appeals' decision warrants review and reversal to restore the proper scope and construction of the CPA.

DATED: August 10th, 2007.

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